WATER MANAGEMENT IN ALBERTA

CHALLENGES FOR THE FUTURE

BACKGROUND PAPER

VOLUME 3

ABORIGINAL WATER ISSUES

Alberta
ENVIRONMENT

ISBN: 0-7732-0640-X
August 14, 1991

Printed on Recycled Paper

91-06963/

SUMMARY

VOLUME 3: ABORIGINAL WATER ISSUES

CHAPTER 1: ABORIGINAL ISSUES

Alberta's native community has a strong stake in water resource management in the province. Volume three describes the issues and the involvement of Indian bands in the use and management of Alberta's water.

Native water rights deal with two main issues: whether or not aboriginal water rights exist and the ownership of the beds and shores of provincial rivers and lakes. These questions are now before the courts, and the Alberta government has developed a position regarding them.

Alberta Environment provides a variety of water management services that are available to Indian bands. For instance, regional offices have provided technical help to several bands for specific water management problems in areas such a river and creek erosion. Licensing and financial aid for water management projects are two other services.

Recently Indian bands in northern Alberta have become increasingly concerned with the potential impacts of industrial development in the north on the rivers. Alberta Environment has invited the participation of the Treaty 8 chiefs from Fort Vermilion area on the study board for Peace-Athabasca-Slave River Basin study.

Aboriginal peoples are an important stakeholder group involved in water management projects. Their involvement is essential in the future as new water management issues and concerns arise.

Printed on Recycled Paper

TABLE OF CONTENTS

VOLUME 3: ABORIGINAL WATER ISSUES

Summary

Chapter 1: Aboriginal Water Issues 1

Printed on Recycled Paper

ABORIGINAL WATER ISSUES

INTRODUCTION

Alberta's native community has a substantial stake in water resource management in the province. In southern Alberta Indian Bands such as the Bloods have been involved in irrigation projects, while in the north native peoples have focussed on the use of rivers and lakes for fishing, hunting and trapping. Alberta Environment appreciates the concerns of native peoples and seeks to accommodate them in water management plans and operations. This paper outlines some of the areas where Alberta Environment has involved Indian communities in water management in the past.

The larger question of native water rights deals with two issues: whether or not aboriginal water rights exist and whether the ownership of the beds and shores of provincial rivers and lakes within federally owned Indian reserves has passed along to the province. These issues are presently before the courts, however the Alberta Government has developed a position on this issue which can be summarized as follows:

> *Aboriginal water rights and ownership of river beds are subjects of continuing review and consideration from a legal and constitutional point of view. These issues, in various forms, are before the courts in Alberta and other parts of Canada. The position of the Crown in right of Alberta is that such alleged water rights and alleged rights to river beds, if they ever existed, were extinguished by competent legislation of, and executive action by, the Crown in right of Canada.*
>
> *The Crown in Right of Alberta further takes the position that by the provisions of the **Constitution Act, 1930** and the **Alberta Natural Resources Amendment Act, 1938**, the water rights and rights to river beds passed to Alberta along with the constitutional jurisdiction over such rights. Such rights are now subject to the provisions of the **Alberta Water Resources Act**, and the **Alberta Public Lands Act**.*

Background

Alberta Environment provides a variety of water management services which are available to Indian bands. These services can be divided into 4 basic areas:

a) Technical and inspection services.

b) Licensing.

c) Financial assistance for water management projects, and

d) Participation in planning programs and community involvement committees.

Printed on Recycled Paper

Activities in each area include:

Technical Assistance

The regional offices of Alberta Environment have provided technical assistance to several bands regarding specific water management problems. The technical assistance provided has primarily been in the form of recommendations for remedial works based on field inspections. Concerns brought to the attention of Alberta Environment include river and creek erosion, flooding, drainage, impacts of works outside the reserve on reserve lands, and low lake levels. In the last five years, there have been approximately 10 requests from Alberta bands or band members.

Licensing

Under the ***Water Resources Act*** licensing of non-domestic water withdrawals from both surface and groundwater sources is required. Most water withdrawals on reserves are for domestic purposes and do not require a license. As a result, the utilization of groundwater by Alberta Bands is not known at this time. Currently, no groundwater licences have been issued within the province; however, eight wells were dug on southern reserves during the Alberta Water Supplies Assistance Program. Financial assistance was provided in the construction of four of these wells.

Several Bands have constructed municipal water supplies to serve at least a portion of their reserve. Sewer and water services are provided where there is an established settlement with homes and community buildings in sufficient numbers and in close proximity . Where residences are spread out over a large area, community water supply pump houses are constructed, and the water is hauled by tank truck to cisterns at each residence. Most of these developments have been licenced under the ***Water Resources Act***. In addition, the Driftpile and Dene Tha Bands have also obtained necessary permits where water lines crossed creeks and rivers.

A number of irrigation licences have been issued on reserves in southern Alberta. Most of the early applications were made by the federal government on behalf of the Bands.

The Blood Band has entered into a tripartite agreement with the Alberta Government and the federal government for a major irrigation project on its reserve. Under the provisions of the agreement the project will be approved under the ***Water Resources Act.***

Funding and Construction of Water Management Projects

Alberta Environment does not provide funding directly to Indian Bands for the construction of water management projects. However, in past years, a number of water management projects have been constructed on various reserves using other sources of funding.

These projects typically provide flood control and drainage or stabilization of lakes for water supply and habitat purposes. Funds for these projects have come from the Bands, outside agencies such as Ducks Unlimited, or municipalities with an interest in a project. Examples of these projects are the O'Donnell Project constructed in 1990 by the County of Parkland under the Alberta Water Management and Erosion Control Program. In this case, the Enoch Band provided right-of-way for the project. Other similar projects built prior to 1980 include the Sturgeon Lake weir, which raised the water level to improve the Town of Valleyview's water supply, and the Cadotte Lake and Horse Lake weirs, which raised water levels for the improvement of habitat.

The federal Department of Indian and Northern Affairs funded the construction of drainage works on the Fox Lake Reserve, located west of Wood Buffalo National Park, to improve native hay fields and reduce flooding of residences.

Recently, Alberta Environment has had considerable involvement with the Tallcree Band, located south of Fort Vermilion, and the Driftpile Band, located on the south shore of Lesser Slave Lake. In the case of the Tallcree Band, surveys and designs were prepared to evaluate alternatives for correcting flooding problems, which prevent agricultural development on the reserve. The band is currently reviewing possible funding sources and assessing the agricultural suitability of the area.

The Driftpile reserve has suffered from floods of the Driftpile River for many years. Flood damages have risen with increasing development on the reserve. Major floods in 1983 and 1988 resulted in damage to homes, yards and gardens, crops, roads and community buildings. In order to address these flooding problems the Driftpile Band, Indian and Northern Affairs, Environment Canada and Alberta Environment have been cooperating on several studies. The first study funded by the federal government was an historical flood summary which assembled all the existing information on past floods and identified potential solutions. Alberta Environment has prepared maps and a computer analysis of the settlement area flooded by the 1988 flood. Additional work still needs to be done to identify suitable flood protection works and funding sources.

Planning Program Involvement

Water resource planning programs conducted by Alberta Environment always include a substantial public involvement process (Background Paper Volume 5 provides more detail on planning programs). This process allows native groups to become involved in water management decision-making along with other stakeholder groups.

Recently, Indian bands in northern Alberta have become increasingly concerned with the potential impacts of development in the north on the rivers of the region. In response, Alberta Environment has invited the participation of the Treaty 8 chiefs from the Fort Vermilion area on the Study Board for the Peace-Athabasca-Slave River Basin Study. The study is a 3-year, joint federal-provincial review of water quality, fisheries, water use and hydrology of the three basins. The chiefs will sit as full members of the Study Board, and will have the opportunity to assist in the direction of the study through its 3-year timeframe.

Another means of liaison between Alberta Environment and the native community is through local committees. One example is the Fort McKay Interface Committee. This committee provides the opportunity for the 3 Indian Bands in the Fort McMurray region to have input and receive information on environmental issues in the area. Although this group's focus is not solely on water, it does deal with water issues on a regular basis.

Future Directions

Alberta Environment is committed to the involvement of all stakeholder groups in water management decision-making. Aboriginal peoples are an important stakeholder group which has been involved in a number of water management projects. The initiatives described in this paper have helped to strengthen the role of Alberta Indian Bands in water management decision-making. This involvement is essential in the future as new water management issues and concerns arise.